SINGAPORE REPORTS.

TAH KAH JOO v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) August 12, 1949]

[Singapore — Magistrate's Appeal No. 53 of 1949]

Common Gaming Houses Ordinance (Cap. 30), S. 4(c) — Distinction between the words "kept or used for gaming" and the words "kept for habitual gaming".

In this case the accused was charged as follows:—

That you on or about 12th February, 1949, at No. 44 A, Joo Chiat Road, Singapore, did assist in the management of a place, to wit the Cathay Club, kept as a common gaming house, and thereby committed an offence punishable under Section 4(c) of the Common Gaming Houses Ordinance (Cap. 30).

The Cathay Club was a registered society having as its avowed object the provision of social facilities for the members. The Club was kept under observation for several days during the Chinese New Year Festival. The raid was carried out on the 12th February, 1949. A Detective gave evidence that he took part in the games of 'Pai Kow' for money on the 10th, 11th and 12th February. Other games were also being played. An Informer also gave evidence to the effect that he had taken part in games of 'Pai Kow' on seven consecutive evenings up to and including the night of the raid. Another witness deposed that he went to the Club to gamble on three or four days between the 1st and 15th day of the Chinese New Year, including 12th February.

The learned Magistrate in one of his grounds of judgment said: "The Club was not open to the public or to any class of the public. Certain non-members, however, who were known to the President of the Club were able to make use of it during the period with which the case is concerned. I did not find that this changed the essentially private nature of the Club." He further found that on each of the days concerning which evidence was given by witnesses the major activity going on in this Club was gaming for money. Accused took part on each occasion and collected 3 cents in $1/- on each game of 'Pai Kow'. The accused was convicted and fined $2,000/-.

Held, that to find that a place is kept for habitual gaming one should consider its activities for a considerable period. If during that period substantial activities other than gaming are carried on the place should not be considered as kept for habitual gaming.

MAGISTRATE'S APPEAL.

N. N. Leicester for the Appellant.

A. V. Winslow for the Crown.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — In this case the appellant was convicted of assisting in the management of a common gaming house. The Magistrate in the course of a very careful judgment found that the premises in which gambling took place were occupied by a Chinese Club known as the Cathay Club. He found that it had an essentially private character. Whatever the nature of the institution, there was ample evidence that the appellant assisted in the management. In the circumstances of the case the prosecution were unable to rely on any of the presumptions which arise in certain circumstances under Cap. 30.

In view of these considerations the question that arose was whether the premises were kept for habitual gaming, within the meaning of section 2 of the Ordinance. It is desirable to bear in mind the distinction between the words "kept or used for gaming" and the words "kept for habitual gaming". The evidence showed that on several days between the first and fifteenth days of the Chinese New Year gaming took place. It is possible and even likely that at that auspicious season the principal interest of the members was gaming. It will be remembered that the otherwise Puritanical Statutes issued by Queen Elizabeth for the University of Cambridge permitted card-playing during the similar period between Christmas and the Twelfth-Night. The Magistrate took the view that a club might become a common gaming house seasonally and temporarily. I think that this is looking at the thing too narrowly. By that process of reasoning the most innocent and respectable of clubs would become a common gaming house during a bridge tournament. To find that a place is kept for habitual gaming I think that one should consider its activities for a considerable period. If during that period substantial activities other than gaming are carried on I do not consider that the place can be considered to be kept for habitual gaming.

I do not think that a few days at a special season can be considered a fair sample.

I consider, therefore, that the case was not proved and I allow the appeal.

Appeal Allowed.

The case of Rex v. Singapore British Malay Football Club, (1934) M.L.J. 3 was cited in the Court below. Ed. M.L.J.

RAJOO v. REX.

[C.C.A. (Murray-Aynsley, C.J., Evans and Brown, JJ.) September 20, 1949]

[Singapore — Criminal Appeal No. 18 of 1949]

Penal Code, S. 379 — Theft of a car — Person found in possession of recently stolen property — Direction to jury.

In this case the appellant was convicted of stealing a motor car with one other accused person. The evidence showed that the two men were found in possession of a motor car which has been stolen a few hours before. The appellant in his defence said that as he was driving his taxi his co-accused whom he knew by sight and who was a paid driver who drove many types of cars, stopped